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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91186494
Party	Plaintiff Kraft Foods Global Brands LLC
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Submission	Opposition/Response to Motion
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Signature	/matthewagriffin/
Date	12/30/2008
Attachments	Motion to Strike MSJ or Extend Time (KOOL).pdf (4 pages)(13072 bytes) Exh A Griffin Decl in Support of M to Strike MSJ or Extend Time.pdf (3 pages)(438340 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 77355857: KOOL
Published in the *Official Gazette* of July 22, 2008, in International Class 32

KRAFT FOODS GLOBAL BRANDS LLC,

Opposer,

v.

ANTHONY BROWN,

Applicant.

Opp. No. 91186494

**OPPOSER’S MOTION TO STRIKE
APPLICANT’S MOTION FOR SUMMARY JUDGMENT**

Kraft Foods Global Brands LLC (“Opposer” or “Kraft”) asks the Board to strike Applicant’s motion for summary judgment (“Motion”) because Applicant filed his Motion before serving his initial disclosures. In the alternative, Opposer asks for three additional weeks to respond to Applicant’s Motion. In support of its motion, Opposer states as follows:

Kraft filed its Notice of Opposition on September 18, 2008. The Board set November 27, 2008 as the deadline for the parties’ discovery conference, and December 27, 2008 as the deadline for the parties’ initial disclosures. (Board’s September 18, 2008, Order). On November 25, Opposer proposed November 26 and December 1 for the parties’ required initial discovery conference. (Declaration of Matthew A. Griffin, attached as Exhibit 1 (“Griffin Dec.”), at ¶ 2, Exh. A). Applicant never responded to Opposer’s e-mail. (*Id.*, ¶ 3). Nor did Applicant ever serve Opposer with its initial disclosures. (*Id.*, ¶ 4).

Instead, Applicant filed its motion for summary judgment. “A party,” however, “may not file a motion for summary judgment until the party has made its initial disclosures.” CFR 2.127(e)(1). Here, not only has Applicant not served its initial disclosures, but it has not cooperated in making arrangements for the parties’ initial discovery conference. Thus, the Board should strike Applicant’s Motion as untimely.

In the alternative, Applicant asks that the Board grant it three additional weeks—until January 26—to file a response to Opposer’s premature motion. Opposer asked for Applicant’s consent to this extension, but has not yet heard from Applicant. (*Id.*, ¶ 5).

Applicant filed his Motion on November 30, 2008. According to the Motion’s certificate of service, Applicant served the Motion by mail on December 1. Thus, Opposer’s response—if the Board does not strike the Motion—would be due on January 5, 2009. *See* TBMP 528.02 (requiring the filing of a response within thirty days of the filing of a summary judgment motion); TBMP 113.05 (expanding due dates by five days for motions served by mail).

Opposer has good cause for this request. Opposer’s offices were closed on December 25, 26, and a half day on December 24. Its offices will also be closed on January 1 and for a half day on December 31. In addition, Matthew Griffin, Opposer’s attorney currently responsible for this matter, was out of the country from December 20 through December 27. Responsibility for this matter will transfer to another of Opposer’s attorneys on January 2. The new attorney will need some time to get up to speed and complete a response. Opposer respectfully submits that this constitutes good cause for an extension of time to respond to Applicant’s Motion, should the Board not strike that Motion as untimely.

CONCLUSION

For the reasons stated above, Opposer asks the Board to strike Applicant's Motion for Summary Judgment as premature or, in the alternative, to grant Opposer three additional weeks—until January 26, 2009—to file its response.

KRAFT FOODS GLOBAL BRANDS LLC

/matthewagriffin/

Matthew A. Griffin

Senior Counsel—Trademarks

Three Lakes Drive NF-577

Northfield, Illinois 60093

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this paper has been served upon
Applicant at his address of record by First Class Mail today, December 30, 2008.

/matthewagriffin/

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KRAFT FOODS GLOBAL BRANDS LLC,

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Opp. No. 91186494

v.

ANTHONY BROWN,

Applicant.

**DECLARATION OF MATTHEW A. GRIFFIN IN SUPPORT OF OPPOSER'S
MOTION TO STRIKE APPLICANT'S MOTION FOR SUMMARY JUDGMENT**

In accordance with 28 U.S.C. § 1746, I, Matthew A. Griffin, hereby declare as follows.

1. I am a Senior Attorney of Trademarks for Kraft Foods Global Brands LLC ("Kraft"). I currently am responsible for handling this Opposition for Kraft. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could testify competently as to them.
2. In my November 25, 2008, e-mail to Applicant, I proposed November 26 and December 1 for the parties' required initial discovery conference. Attached as Exhibit A is a true and correct copy of that e-mail.
3. I never received a response to my e-mail.
4. Applicant never served Kraft with his initial disclosures.
5. On December 29, 2008, I e-mailed Opposer, asking for his consent to a three-week extension of time to respond to his motion for summary judgment, but I have not heard from him.

6. Kraft's offices were closed on December 25, 26, and a half day on December 24.

Its offices will also be closed on January 1 and for a half day on December 31.

7. I was out of the country from December 20 through December 27.

8. On January 2, I will no longer have responsibility for this matter. This matter will then be handled by Mary Carragher, another of Opposer's attorneys. She will need time to get up to speed on this matter and complete a response.

I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

A handwritten signature in blue ink, appearing to be "M. Carragher", is written over a horizontal line.

Griffin, Matthew A

From: Griffin, Matthew A
Sent: Tuesday, November 25, 2008 10:05 AM
To: ablebody123715@att.net
Cc: Falk, Melissa; Lindley, Cameishi J
Subject: KOOL-AID v. KOOL (TTAB Opp. No. 91186494) - U.S. - Kraft ID 121534

Anthony--

I see from the Board's Order that the parties' deadline to hold a discovery conference is November 27. Since that is Thanksgiving Day, I propose that we have our conference by telephone either tomorrow afternoon (say, 2:00 pm Chicago time) or in the morning of Monday, December 1 at 10:00 am Chicago time.

Do either of those times work for you?

Sincerely,

Matt Griffin
Senior Counsel--Trademarks
Kraft Foods
Three Lakes Drive (NF-577)
Northfield, Illinois 60093
847.646.4872

Exhibit A

12/30/2008